

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 JASON ALAN SMITH,

9 Plaintiff,

v.

10 BREMERTON POLICE  
11 DEPARTMENT, et al.,

12 Defendants.

CASE NO. C19-5479 BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 6, and Plaintiff Jason Alan Smith’s (“Plaintiff”) objections to the R&R, Dkt. 7.

16 On August 14, 2019, Judge Creatura issued the R&R recommending that the Court grant Plaintiff’s application to proceed *in forma pauperis* but deny all of Plaintiff’s claims without prejudice other than his claim against Defendant D. Ejde under the Fourth Amendment in his individual capacity. Dkt. 6 at 16.

20 The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or  
21  
22

1 modify the recommended disposition; receive further evidence; or return the matter to the  
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 Plaintiff's objections do not argue Judge Creatura's legal conclusions are incorrect  
4 or argue that Judge Creatura failed to consider facts raised in his complaint. The Court  
5 finds that the R&R liberally construed Plaintiff's complaint and properly recommended  
6 that the majority of Plaintiff's claims be dismissed because even a liberal interpretation  
7 "may not supply essential elements of the claim that were not initially pled." *Ivey v.*  
8 *Board of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

9 Plaintiff's argument consists of re-characterizing the facts alleged in his complaint  
10 or providing additional facts in order to address the deficiencies the R&R identified for  
11 each of the claims dismissed. In other words, Plaintiff contends that he can provide  
12 additional or more specific allegations to successfully state a claim as to each of the  
13 claims he has alleged. Because Judge Creatura recommends that Plaintiff's claims other  
14 than his claim against Defendant D. Ejde be dismissed without prejudice and the Court  
15 adopts that recommendation, Plaintiff may file a new complaint addressing the  
16 deficiencies Judge Creatura carefully identified in the R&R.

17 The Court finds that Plaintiff may be interested in the Federal Bar Association's  
18 civil right clinic.<sup>1</sup> Additionally, the Court notes that Plaintiff's original complaint was

---

19  
20 <sup>1</sup> "The Federal Civil Rights Legal Clinics offer free, limited legal advice and referrals to King and  
21 Pierce County residents. The Clinic focuses on Washington State residents who are contemplating filing  
22 or have already filed legal actions in the United States District Court for the Western District of  
Washington and who are encountering challenges accessing our legal system." [http://fba-](http://fba-wd-wash.org/looking-for-help/)  
wd-wash.org/looking-for-help/. "For additional information about the Tacoma Clinic, or to schedule an  
appointment in Tacoma, please call: 253.572.5134. Phone lines are open Monday through Thursday from  
9:00 am to 12:00 pm and 1:15 pm to 4:00 pm." *Id.*

1 filed with an application for Court-appointed counsel. As stated in Dkt. 2, the Clerk's  
2 office found Plaintiff's application for Court-appointed counsel was missing his signature  
3 and explained that for pro se parties not registered to e-file, documents must contain a  
4 physical signature and be resubmitted for filing to the Clerk. If Plaintiff corrects this  
5 missing signature, the Court could consider the application.

6 The Court having considered the R&R, Plaintiff's objections, and the remaining  
7 record, does hereby find and order as follows:

- 8 (1) The R&R is **ADOPTED**;
- 9 (2) Plaintiff's application to proceed *in forma pauperis*, Dkt. 1, is **GRANTED**;
- 10 (3) All of Plaintiff's claims other than his claim against Defendant Ejde under  
11 42 U.S.C. § 1983 for violation of the Fourth Amendment are **DISMISSED**  
12 **without prejudice**;
- 13 (4) Plaintiff may file an amended complaint no later than December 13, 2019;  
14 and
- 15 (5) The Clerk shall issue the initial case order.

16 Dated this 19th day of November, 2019.

17  
18 

19 BENJAMIN H. SETTLE  
20 United States District Judge  
21  
22